IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

..

:: ORDER ::

Ramesh Lodha	Vs.	Shri Labh Shubhlal Chordia & anr.

S.B.CIVIL WRIT PETITION NO.1001/2006.

Date of order : 2nd June 2006

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr. Rajesh Choudhary, for the petitioner
Mr. Tribhuvan Gupta, for the respondent

BY THE COURT:

Shorn of unnecessary details, suffice is to notice for the purpose of this writ petition that the petitioner-tenant is facing a petition for his eviction from the suit premises on the ground of reasonable and bona fide requirement of the landlord and on the ground of the petitioner having acquired alternative adequate premises. The petitioner by filing reply to the said eviction petition has, inter alia, averred that the landlord in relation to the same tenancy had earlier taken up litigation in Civil Suit No.281/2002 raising ground of reasonable and bona fide requirement and then had withdrawn the same; and that thereafter, the landlord adopted

proceedings under Section 10 of the Rajasthan Rent Control Act, 2001 ('the Act') seeking immediate recovery of possession in eviction petition numbered 93/2003 that was rejected by the Rent Tribunal and an appeal submitted to the Appellate Rent Tribunal (Appeal No.33/2004) was also withdrawn without any permission for filing a fresh petition. With reference to these facts the present petitioner while defending the eviction petition has submitted that its trial is barred by the principles of res judicata. A rejoinder has been submitted by the landlord refuting the contentions sought to be raised by the petitioner. The learned Rent Tribunal has proceeded to frame the following issues on 12.12.2005:-

> "(1) आया प्रार्थी को विवादित परिसर की अपने व अपनी पत्नी के स्वास्थ्य के कारण रिहायश हेतु निजी व सदभाविक आवश्यकता है ?
>
> .....प्रार्थी
>
> (2) आया विपक्षी को व्यवसाय हेतु वैकल्पिक परिसर प्राप्त हो गया है ?"

The petitioner moved an application (Annex.4) with reference to his plea that the trial is barred by the principles of res judicata and submitted that an issue to that effect is required to be framed. The landlord submitted a reply (Annex.5) to the application with the submissions that earlier Suit No.281/2002 was withdrawn after coming into force of the

new Rent Control Act with permission to file afresh and, therefore, the said suit was not decided. Regarding the petition submitted under Section 10 of the Act, the landlord submitted that though the Tribunal found him suffering from permanent disablement but did not grant relief as the premises in question were held to be of commercial use and, hence he withdrew the said proceedings at appellate stage and then filed the present petition under Section 9 of the Act and, therefore, the same is not barred by the principles of res judicata.

By way of the impugned order dated 25.01.2006 (Annex.8) the Rent Tribunal, Udaipur has proceeded to reject the application submitted by the petitioner with the observations that earlier suit proceedings were withdrawn and, therefore, they do not answer to the description of final decision; and that earlier petition under Section 10(3) of the Act was not allowed because the premises were taken to be commercial one and the said petition was withdrawn in appeal and the landlord has filed fresh eviction petition raising the grounds under Section 9(i) and 9(j) of the Act which were not taken in the earlier petition and, therefore, the application submitted by the petitioner was not maintainable. Hence this writ petition.

Having heard learned counsel for the parties and having perused the material placed on record, this Court is of opinion that the impugned order cannot be sustained.

The learned Tribunal at the stage of decision of the application moved by the petitioner-tenant was not as such concerned with merits of the plea raised by the petitioner-tenant; and the only relevant question was as to whether an issue with reference to the objection taken by the petitioner was required to be framed or not? However, the Tribunal has proceeded to cursorily deal with the merits of the plea without dilating upon the pleadings in the earlier litigations and the orders passed therein and without examining the effect of withdrawal of earlier suit; then filing of application under Section 10 of the Act 2001; then its withdrawal; and then filing of the present petition. The plea as taken by the tenant whether ultimately sustains itself or not is a matter entirely different, but the plea cannot be said to be absolutely frivolous or bogus a plea so as to be treated to be not worth leading to an issue in the case; nor it could have been disposed of in a summary manner.

It cannot be denied that earlier two litigations were taken up by the landlord in relation to the same premises seeking eviction of the tenant on the ground of reasonable and bona fide requirement which remains a ground in the present

eviction petition too. Whether any bar applies to the present eviction petition or not is a question essentially required to be answered by application of relevant principles of law with reference to the pleadings of the parties and proof of certain basic and essential facts. A material proposition dealing with facts and law having been put forward, an issue in that regard is required to be framed.

It is of course true that the Rent Tribunal is not bound by the procedure laid down by the Code of Civil Procedure but is guided by the principles of natural justice. In the present case, it is noticed that the Tribunal itself has proceeded to frame two issues for determination of the questions involved in the case. Once the procedure has been adopted by the Tribunal to frame issues and then to proceed with the trial, this Court is clearly of opinion that the application moved by the petitioner-tenant for framing of the issue on his plea of the bar of principles of res judicata was unexceptionable and ought to have been allowed. The learned Tribunal does not appear to be justified in refusing to frame the relevant issue that could have been framed without causing any prejudice to either of the parties. The order impugned cannot be sustained and deserves to be set aside.

As a result of the aforesaid, this writ petition succeeds to the extent indicated above; the impugned order dated 25.01.2006 is set aside and it shall be required of the Tribunal to frame necessary issue as prayed for by way of the application dated 18.01.2006 and then to proceed with consideration of the eviction petition in accordance with law. The parties shall bear their own costs of this writ petition.

(DINESH MAHESHWARI), J.

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